



6560.50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA-HQ-OAR-2011-0417; FRL- 9806-7]

RIN 2060-AR74

Greenhouse Gas Reporting Rule: Revision to Best Available Monitoring Method

Request Submission Deadline for Petroleum and Natural Gas Systems Source

Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: The EPA is revising the deadline by which owners or operators of facilities subject to the petroleum and natural gas systems source category of the Greenhouse Gas Reporting Rule must submit requests for use of best available monitoring methods to the Administrator. This revision does not change any other requirements for owners or operators as outlined in the best available monitoring method rule provisions.

DATES: This final rule is effective on [INSERT THE DATE 30 DAYS AFTER THE DATE OF PUBLICATION OF THIS FINAL RULE IN THE FEDERAL REGISTER].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2011-0417. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and is

publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC-6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (202) 343-9263; fax number: (202) 343-2342; email address: GHGReportingRule@epa.gov. For technical information and implementation materials, please go to the Greenhouse Gas Reporting Rule Program website at <http://www.epa.gov/ghgreporting/index.html>. To submit a question, select Help Center.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this final rule will also be available through the WWW. Following the Administrator's signature, a copy of this action will be posted on the EPA's Greenhouse Gas Reporting Program website at

<http://www.epa.gov/ghgreporting/reporters/notices/index.html>.

SUPPLEMENTARY INFORMATION:

Regulated Entities. The Administrator determined that this action is subject to the provisions of Clean Air Act (CAA) section 307(d). See CAA section 307(d)(1)(V) (the provisions of section 307(d) apply to “such other actions as the Administrator may determine”). This final rule affects owners or operators of petroleum and natural gas

systems. Regulated categories and affected entities may include those listed in Table 1 of this preamble:

Table 1. Examples of Affected Entities by Category

Category	NAICS	Examples of affected facilities
Petroleum and Natural Gas Systems	486210	Pipeline transportation of natural gas.
	221210	Natural gas distribution facilities.
	211	Extractors of crude petroleum and natural gas.
	211112	Natural gas liquid extraction facilities.

Table 1 of this preamble is not intended to be exhaustive, but rather lists the types of facilities that the EPA is now aware could be potentially affected by the reporting requirements. Other types of facilities not listed in the table could also be affected. To determine whether you are affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98, subpart A or the relevant criteria in the sections related to direct emitters of GHGs. If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit (the Court) by [INSERT THE DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER]. Under CAA section 307(d)(7)(B), only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Section 307(d)(7)(B) of the CAA also provides a mechanism for the EPA to convene a proceeding for reconsideration, “[i]f the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for

public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.” Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20004. Note, under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

CAA	Clean Air Act
CBI	confidential business information
CFR	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
FR	Federal Register
GHG	greenhouse gas
GHGRP	Greenhouse Gas Reporting Program
CO ₂ e	carbon dioxide equivalent
NAICS	North American Industry Classification System
NTTAA	National Technology Transfer and Advancement Act
OMB	Office of Management and Budget
QA/QC	quality assurance/quality control
RFA	Regulatory Flexibility Act
U.S.	United States
UMRA	Unfunded Mandates Reform Act of 1995

WWW World Wide Web

Organization of This Preamble. The following outline is provided to aid in locating information in this preamble.

- I. Background
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 - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act (RFA)
 - D. Unfunded Mandates Reform Act (UMRA)
 - E. Executive Order 13132: Federalism
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 - G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
 - H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer and Advancement Act
 - J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
 - K. Congressional Review Act

I. Background

A. Organization of this Preamble

This preamble consists of three sections. The first section provides background on 40 CFR part 98, subpart W and describes the purpose and legal authority for this action. The second section of this preamble summarizes the revision made to the specific requirement in the petroleum and natural gas systems (subpart W) source category of 40 CFR part 98 and comments received. The third section of this preamble discusses the various statutory and executive order requirements applicable to this rulemaking.

B. Background on the Final Rule

On November 30, 2010 (75 FR 74459) the EPA finalized the Petroleum and Natural Gas Systems source category, subpart W, of the Greenhouse Gas Reporting Rule. As part of that rule, the EPA finalized detailed provisions in 40 CFR 98.234(f), allowing for owners or operators to use best available monitoring methods for specified parameters in 40 CFR 98.233 where additional time is needed to comply with the monitoring and quality assurance/quality control (QA/QC) requirements as outlined in the rule. In these cases, owners or operators are given the flexibility, upon approval, to estimate parameters for equations in 40 CFR 98.233 by using supplier data, engineering calculations, other company records or monitoring methods currently used by the facility that do not meet the specifications of subpart W.

On February 19, 2013, the EPA published a direct final rule (78 FR 11585) and a parallel proposal (78 FR 11619) to amend the deadline for submitting best available monitoring method requests to the Administrator from September 30 to June 30 of the year prior to the reporting year for which use of BAMM is sought. In those actions, the EPA stated that if an adverse comment were received, a timely withdrawal notice would be published in the Federal Register informing the public that the direct final rule would not take effect and that the EPA would address comments in any subsequent final rule based on the parallel proposal. On April 2, 2013, the direct final rule was withdrawn (78 FR 19605) due to potentially adverse comment received on the direct final rule. Based on the comments received, EPA is finalizing the amendment as proposed. Responses to comments received are addressed below and can be found in the document, “Response to Comments: Greenhouse Gas Reporting Rule: Revision to Best Available Monitoring

Method Request Submission Deadline for Petroleum and Natural Gas Systems Source Category” (see EPA-HQ-OAR-2011-0417).

C. Legal Authority

The EPA is promulgating this rule amendment under its existing CAA authority, specifically authorities provided in CAA section 114. As stated in the preamble to the 2009 final rule (74 FR 56260, October 30, 2009) and the Response to Comments on the April 10, 2009 initial proposed rule,¹ Volume 9, Legal Issues, CAA section 114 provides the EPA broad authority to require the information proposed to be gathered by this rule because such data would inform and are relevant to the EPA’s carrying out a wide variety of CAA provisions. As discussed in the preamble to the initial proposed rule (74 FR 16448, April 10, 2009), CAA section 114(a)(1) authorizes the Administrator to require emissions sources, persons subject to the CAA, manufacturers of control or process equipment, or persons who the Administrator believes may have necessary information to monitor and report emissions and provide such other information the Administrator requests for the purposes of carrying out any provision of the CAA. For further information about the EPA’s legal authority, see the preambles to the 2009 proposed and final rules and EPA’s Response to Comments, Volume 9.

II. Final Amendments and Responses to Public Comments

In this action, the EPA is finalizing the amendment to the deadline for submitting Subpart W best available monitoring method requests to the Administrator from September 30 to June 30 of the year prior to the reporting year for which use of BAMM is sought . Specifically, the EPA is revising the last sentence in 40 CFR 98.234(f)(8)(i) to replace the date “September 30” with the date “June 30” so that the sentence now reads

¹ See <http://www.epa.gov/climatechange/emissions/responses.html>

“For reporting years after 2012, a new request to use best available monitoring methods must be submitted by June 30th of the year prior to the reporting year for which use of best available monitoring methods is sought.” The EPA is not finalizing any other amendments to provisions related to best available monitoring methods or other parts of subpart W in this action.

After evaluation of comments received, the EPA has determined that the amendment to the rule should become final as proposed. A brief summary of comments received and our responses are provided below. The EPA’s responses to all comments can be found in the document “Response to Comments: Greenhouse Gas Reporting Rule: Revision to Best Available Monitoring Method Request Submission Deadline for Petroleum and Natural Gas Systems Source Category” (see EPA-HQ-OAR-2011-0417).

One commenter stated that the EPA should not implement the direct final action. This commenter did not explicitly state why the action should not be implemented, nor did the commenter state any specific concerns with the amendment. Without any further information why the amendment should not be implemented, the EPA is maintaining its position that the amendment to the rule as proposed should become final. The EPA continues to conclude that this amendment would have minimal adverse impact on owners or operators requesting to use best available monitoring methods in future years. As stated in the direct final rule and associated co-proposal, the EPA believes that this amendment will provide additional certainty to reporters prior to the upcoming reporting year for which the use of best available monitoring methods are sought. Additionally, finalizing this amendment results in a more appropriate time frame for comprehensively

reviewing and processing submitted requests and allowing the EPA to notify all owners and operators of final determinations in a timely manner.

The EPA also received a comment that is beyond the scope of this rulemaking as explained in the Response to Comments document.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This amendment affects a provision in the rule related to the date of submission for best available monitoring method requests and does not affect what is submitted in those request or any associated burden with submitting those requests. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations, 40 CFR 98 subpart W (75 FR 74458), under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060-0651. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the

Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this final rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of these rule amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives "which minimize any significant economic impacts of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that the rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The EPA anticipates that this amendment would result in greater certainty to reporters choosing to submit best available monitoring method requests to the EPA for use in future years.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, and tribal governments or the private sector. This action imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, the amendments in this action are not subject to the requirements of section 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

This action applies to an optional provision in the final rule for subpart W, which in turn applies to petroleum and natural gas facilities that emit greenhouse gases. Few, if any, State or local government facilities would be affected. This action also does not limit the power of States or localities to collect GHG data and/or regulate GHG emissions.

Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal

Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Further, this action would not result in any changes to the current requirements of 40 CFR part 98 subpart W and only applies to

optional provisions in 40 CFR part 98 subpart W. Thus, Executive Order 13175 does not apply to this action.

Although Executive Order 13175 does not apply to this action, the EPA sought opportunities to provide information to Tribal governments and representatives during the development of the rule for subpart W promulgated on November 30, 2010. A summary of the EPA's consultations with Tribal officials is provided in Sections VIII.E and VIII.F of the preamble to the 2009 final rule and Section IV.F of the preamble to the 2010 final rule for subpart W (75 FR 74485).

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be

inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment because it is a rule addressing information collection and reporting procedures.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally provides that before

a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and the required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule is effective on [INSERT THE DATE 30 DAYS AFTER THE DATE OF PUBLICATION OF THIS FINAL RULE IN THE FEDERAL REGISTER].

List of Subjects in 40 CFR Part 98

Environmental Protection, Administrative practice and procedures, Air pollution control, Greenhouse gases, Monitoring, Reporting and recordkeeping requirements.

Dated: April 24, 2013

Bob Perciasepe,
Acting Administrator.

For the reasons discussed in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 98-[AMENDED]

1. The authority citation for part 98 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart-W [Amended]

2. Section 98.234 is amended by revising paragraph (f)(8)(i) to read as follows:

§98.234 Monitoring and QA/QC Requirements

* * * * *

(f) * * *

(8) * * *

(i) *Timing of request.* EPA does not anticipate a need for best available monitoring methods beyond 2011, but for all reporting years after 2011, best available monitoring methods will be considered for unique or unusual circumstances which include data collection methods that do not meet safety regulations, technical infeasibility, or counter to other local, State, or Federal regulations. For use of best available monitoring methods in 2012, an initial notice of intent to request best available monitoring methods must be submitted by December 31, 2011. Any notice of intent submitted prior to the effective date of this rule cannot be used to meet this December 31, 2011 deadline; a new notice of intent must be signed and submitted by the designated representative. In addition to the initial notification of intent, owners or operators must also submit an extension request containing the information specified in 98.234(f)(8)(ii) by March 30, 2012. Any best available monitoring methods request submitted prior to the

effective date of this rule cannot be used to meet the March 30, 2012 deadline; a new best available monitoring methods request must be signed and submitted by the designated representative. Owners or operators that submit both a timely notice of intent and extension request consistent with 98.234(f)(8)(ii) can automatically use best available monitoring method through June 30, 2012, for the specific parameters identified in their notification of intent and best available monitoring methods request regardless of whether the best available monitoring methods request is ultimately approved. Owners or operators that submit a notice of intent but do not follow up with a best available monitoring methods request by March 30, 2012 cannot use best available monitoring methods in 2012. For 2012, when an owner or operator has submitted a notice of intent and a subsequent best available monitoring method extension request, use of best available monitoring methods will be valid, upon approval by the Administrator, until the date indicated in the approval or until December 31, 2012, whichever is earlier. For reporting years after 2012, a new request to use best available monitoring methods must be submitted by June 30th of the year prior to the reporting year for which use of best available monitoring methods is sought.

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